



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,424	10/22/2003	John Miller	021186-001520US	8368

20350 7590 12/15/2004

TOWNSEND AND TOWNSEND AND CREW, LLP
TWO EMBARCADERO CENTER
EIGHTH FLOOR
SAN FRANCISCO, CA 94111-3834

EXAMINER

HOOK, JAMES F

ART UNIT PAPER NUMBER

3754

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,424

Applicant(s)

MILLER ET AL. 

Examiner

James F. Hook

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>11-24-03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Vallana. The patent to Vallana discloses the recited braided tubular structure comprising a plurality of component tubular members 4 each having longitudinal lumens or hollow core 40, woven radially in and out to form a substantially tubular braided structure for medical use, such as a stent, where the component tubular members are formed of polymeric materials.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Bankert, Jr. The patent to Bankert, Jr. discloses the recited braided tubular structure comprising a plurality of component tubular members 6 each having longitudinal lumens or hollow core 16, woven radially in and out to form a substantially tubular braided structure (see fig 2), where the component tubular members are formed of rubbers, and at least one polymeric tubular member 2 is exterior to the tubular braided structure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vallana in view of Samson (345). The patent to Vallana discloses all of the recited structure with the exception of forming the component tubular members of superelastic metal alloys such as nickel and titanium alloy. The patent to Samson discloses the recited braided tubular structure comprising a plurality of component members 110 which can take various forms including fibers, woven radially in and out to form a substantially tubular braided structure for medical use, such as a stent which are sized for use in the human body, where the component members are formed of polymeric materials or can be formed of superelastic metal alloys such as nickel and titanium alloy. It would have been obvious to one skilled in the art to modify the material used for the woven elements of Vallana to be made of nickel and titanium alloy as such is a known equivalent material used for woven members of stents as suggested by Samson, where metal alloys such as these are superior in life and would thereby save money due to the longer life, and such is also able to be detected by x-ray to allow for easier identification over polymeric materials.

Art Unit: 3754

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Samson (345) in view of Vallana. The patent to Samson discloses all of the recited structure with the exception of forming the component members of tubes. The patent to Samson discloses that such can also be used in catheters and endoscopes which are known to inherently include outer polymeric sheaths over the braided structure as seen in many of the cited prior art references. It would have been obvious to one skilled in the art to modify the component members of Samson to be in the form of tubes as suggested by Vallana that teaches woven stent component members can be formed of solid threads or hollow, where the use of hollow threads would reduce the amount of material needed and thereby lower the cost especially when using more expensive materials such as superelastic alloys.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Samson (345) in view of Vallana as applied to claims 1-7 above, and further in view of Navis. The patent to Samson as modified discloses all of the recited structure with the exception of providing the end of the device with a plenum. The patent to Navis discloses that it is old and well known in the art to provide the ends of multilumen tubes such as catheters with plenums to allow for connection to other devices. It would have been obvious to one skilled in the art to modify the ends of Samson as modified by including plenums to connect the structure when such is a catheter or endoscope to another apparatus as suggested by Navis as such will allow for the easier connection of devices to the tubular product and save time and therefore money.

Conclusion

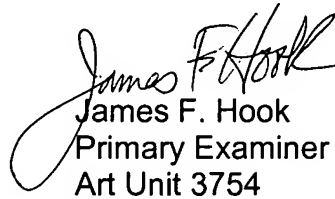
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Winter, Rhea, Jr., Dickinson, Park, Steen, Hoste, and Miller (245 and 782) showing prior art patents to multi lumen tubes and woven structures in tubular objects.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James F. Hook
Primary Examiner
Art Unit 3754

JFH